

(1980) 01 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 1117 of 1978

A. Prabhakara Reddy

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:

Constitution of India, 1950 — Article 13, 226

Karnataka Medical Colleges (Selection for Admission) Rules, 1981 — Rule 11, 9, 9 (1)

Citation : AIR 1980 Kar 207 : (1980) 1 KarLJ 456

Hon'ble Judges : M.P. Chandrakantharaj URS, J

Bench : Single Bench

Advocate : G. Gangi Reddy, for the Appellant; A. Puranik, Government Advocate, for the Respondent

Judgement

1. This petition coming up for further order, by consent of counsel for petitioner and Respondents 1 and 2, is taken up for final hearing and disposed of by the following order.
2. The Court felt that Respondents 3 and 4 were not necessary parties while issuing the rule. Therefore, no notice had gone to them.
3. In this Writ Petition the petitioner has prayed for a Writ of Mandamus from this Court to Respondents 1 and 2 to transfer him to the Bangalore Medical College (Government College) affiliated to the Bangalore University from the Government Medical College, Hubli, where he is now prosecuting his studies in M. B. B. S. Course consequent upon his selection and allotment to the Karnataka Medical College, Hubli (affiliated to the Karnataka University).
4. The petitioner has founded his right to Writ of mandamus on Rule 9 read with Rule 11 of the Karnataka Medical Colleges (Selection for Admission) Rules, 1978 (hereinafter referred to as "the Rules").
5. Sri Gangi Reddy, learned Counsel appearing for the petitioner has strenuously argued that the Selection Committee was bound to allot, after selection of

candidates to the Government Medical Colleges affiliated the University from which the selected candidates had also obtained their qualifying examination, namely, the Two Year P. U. C. Course.

6. R. 9 of the Rules is as follows:

" 9. Distribution of seats among Government Colleges:

(1) Subject to the provisions contained In the following sub-rules, seats other than those reserved under clause (a) of sub-rule (2) of Rule 2 and Rule 4 shall be distributed University-wise, i.e., seats in Colleges affiliated to the Karnataka University shall be allotted to persons passing from Colleges affiliated to that University and seats in Colleges affiliated to the Bangalore and Mysore Universities shall respectively be allotted to persons passing from the colleges affiliated to each such University.

Provided further that not more than thirty per cent of the seats in colleges affiliated to any Universities may in the discretion of the Selection Committee, be allotted to students passing from colleges affiliated to any other University in the State or elsewhere in India.

(2) Notwithstanding anything in sub rule (1), where the number of persons belonging to the S. Cs. and S. Ts. selected for allotment of seats in any University falls short of the number of seats reserved for the said categories of persons under R. 5, such seats shall be filled from among the applicants belonging to the said categories in the other Universities".

And Rule 11 of the Rules is as under:

"Allotment of persons to Government Medical Colleges: -

(1) Persons selected under Rule 10 to Government Medical Colleges shall be allotted to the several Government Medical Colleges by the Selection Committee, regard being had to the place of residence of such persons and the preference indicated by them.

(2) The Selection Committee shall not be bound to allot any candidate to any particular college

(3) The decision of the Selection Committee regarding allotment shall be final."

7. Learned counsel for the petitioner contends that having regard to the "intention of the rule, the Selection Committee is bound to make allocation in accordance with sub-rule, (1) of Rule 9 without any transgression In spite of the discretion reserved for the Selection. Committee under the proviso to that sub-rule" in so far as it relates to the candidates at the top of the list in the merit pool. He fairly concedes that this must be inferred having regard to R. 11 set out above.

8. I am unable to see how that could be gathered as the intention by the combined reading of R. 9 (1) and R. 11. Though the language of sub-rule (1) of

R. 9 of the Rules is unambiguous and - dear it is conditioned and its operation is restricted by the proviso to that sub-rule. The proviso empowers the Selection Committee to alter the command of sub-rule (1) to the extent of 30 % of the allocations to be made in its absolute discretion and make allotment of selected candidates to colleges affiliated to other Universities than the "University from which the candidates passed their 11 year P. U. C. Examinations. When the language of the rule is" clear, unambiguous and easily understandable, Art. 226 of the Constitution would not permit this Court to gather any intention other than what is manifest. To infer a further limitation on the prescribed Powers of the Committee as suggested by learned Counsel for the petitioner would therefore be incorrect. There is nothing in Rule 11 of the Rules to assist petitioner because sub-rule (2) of that rule again makes it clear that the Selection Committee would not be bound by the Preference indicated by the selected candidate in his application in the matter of the choice of college. It must also observed that while Rule 9 and Rule 10 deal with essentially the allotment of selected candidates University wise, R. 11 Is essentially relatable to Colleges only It is possible there is only one college under a University as it is in fact the case in Karnataka State. "Therefore nothing in the scheme of the Rules is suggestive that Rr. 9 and 11 should be read together.

9. As a rule this Court exercising it's under Article 226 of the Constitution will issue a Writ of mandamus to the Authorities like the 1st and 2nd Respondents if they failed to discharge their duties arising out of legal Obligations, in spite of a written demand It is only when such duties are cast on the authorities and they fail to perform them, the right to seek a Writ of mandamus arises in favour of the citizen.

10. A bench of five Judges of this Court in Gokula Education Foundation (Regd.) and Others Vs. The State of Karnataka and Others, has clearly held that Rules in question and similar other Rules that the, State does make from time to time are not statutory Rules having "the force of law as that term is defined under. Article 13 of the Constitution. If the Rules in question am not law or the Rules having the force of law, the aforementioned decision further, lays down, are more in the nature of administrative instructions like the Education Code or Public Works Department Code which confer no right upon the citizen and, breach of which can only entail that person causing the breach the wrath of the higher authorities and no more. When no rights are flowing to, the selected candidates under the Rules, there is no obligation or duty cast upon the Selection Committee or State to allot the petitioner of Bangalore Medical College solely on the ground that he stands very high in the list of selected candidates on merit when there is discretionary power to make 30% allocation to other Universities in the manner indicated in Rule 9 of the Rules.

11. Further, as a matter of rule, no High Court will issue a writ of mandamus unless the aggrieved person has made a written demand on the Authorities concerned to enforce what he claims to be his legal right. Mr. Gang Reddy fairly

concedes that no written demand has been made calling upon the Selection Committee or the State to allot him to Bangalore Medical College.

12. For the above reasons, it is not possible to grant a writ of mandamus as prayed for by the petitioner. However, this Court should not hesitate to observe that if otherwise the candidate deserves a transfer to the Bangalore Medical College on grounds of compassion which has been made out in the petition and which has not been denied by the State by any return filed, the 1st and 2nd respondent should not hesitate to give a transfer to him if prayed for and if circumstances permit.

13. Rule issued earlier is discharged and the petition is dismissed. There will be no order as to costs.

14. Rule discharged.